



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
REGULATORY DIVISION
P.O. BOX 6898
JBER, ALASKA 99506-0898

OCT 12 2012

Regulatory Division
POA-2006-753

President Frank Standifer III
Native Village of Tyonek
Post Office Box 82009
Tyonek, Alaska 99682

Dear President Standifer:

This letter is to inform you that on September 25, 2012, we received an email from your advisor, Ms. Heather Kendall-Miller, with an attachment that contained comments prepared by Mr. Jim Powell of the Center for Science in Public Participation (CSPP) on a draft Wetlands Functional Assessment Methodology report for the Chuitna Supplemental Environmental Impact Statement (SEIS). This draft report was distributed for review among the Wetlands Functional Assessment subgroup for the SEIS and is currently not available for public review or comment.

Although the Native Village of Tyonek (NVT) is part of other subgroups for the SEIS, they are not currently part of the Wetlands Functional Assessment subgroup. The subgroups for the SEIS were established among the Cooperating Agencies (CA's) to ensure that those with technical expertise about the specific topic were included. For example, the Groundwater Modeling subgroup is comprised mainly of hydrologists, whereas the Functional Assessment group is comprised mainly of biologists that have special expertise in aquatic resource functions. When the functional assessment subgroup was created, NVT had the opportunity to participate, but declined. Also, in an August 23, 2012, email to Ms. Kendall-Miller and NVT, the U.S. Army Corps of Engineers (USACE) stated that if NVT had technical expertise in aquatic resource functional assessments and was interested in participating on the working group, to contact us and we would consider their request to join the subgroup; however, to date we have not received such a request.

While it is our intent to provide access and the opportunity for the CA's to review all material and data prepared for the SEIS as specified under the procedures of the SEIS Memorandum of Understanding (MOU) between the USACE and CA's, the procedures also state that the USACE as lead agency will distribute the work products as appropriate to the CA's not yet releasable to all interested parties. As lead federal agency for the SEIS, it is important that the USACE coordinate communications among the CA's and subgroups to ensure efficient and timely reviews while attempting to manage and minimize the impact, (both from a time and resource perspective), of information flowing to groups that are outside the scope of the group's review obligations.

The CSPP is a Non-Governmental Organization (NGO) that is not a Cooperating Agency and has not been identified as one of NVT representatives on the SEIS. Allowing an NGO access to the draft functional assessment

methodology report creates a significant area of concern for the USACE because the SEIS development process currently is not open for public review and comment.

We are concerned about the number of times NVT's representatives have violated the MOU between the USACE and the CA's for the Chuitna Coal SEIS. Below is a summary of the letters we have written to you that identifies these violations:

1) In our June 21, 2012, letter we expressed concerns that Ms. Kendall-Miller invited the Park Service to be a CA, when that is the USACE's role. In addition, she did not contact us prior to inviting them to be a CA.

2) In our March 21, 2012, letter to you we noted that your advisor, Mr. Rob Rosenfeld, forwarded confidential meeting invites to Cook Inlet tribes. This invitation was already coordinated by our Native Liaison and was not Mr. Rosenfeld's role, and resulted in confidential information being sent to public entities.

3) In our February 3, 2012, letter, we expressed concerns that confidential emails that were intended for review only by CA's were forwarded by Mr. Rosenfeld to members of the public.

4) In our September 21, 2011, letter we informed you that Mr. Rosenfeld copied a member of the public on an email that was only intended for official review among the CA's.

5) In our August 15, 2011, letter to you we noted that Mr. Rosenfeld had acted as a member of the public during meetings regarding the Chuitna SEIS, rather than as an advisor to NVT.

While we value NVT's input and role as a CA, the number of occurrences of NVT's advisors releasing information or contacting groups outside the terms of the MOU creates a serious concern for us and jeopardizes NVT's ability to remain a CA. Please let us know how you will ensure all future NVT participation as a CA will operate within the framework of the MOU between the USACE and the CA's. If you cannot ensure that all future NVT participation will operate according to the MOU, we will have no choice but to remove the NVT as a CA.

I am available to discuss these issues at your convenience. For additional information, please contact Ms. Marcia Heer of my staff at (907) 753-5759, toll free from within Alaska at (800) 478-2712, by e-mail at Marcia.l.heer@usace.army.mil, or by mail at the letterhead address.

Sincerely,



Terri Stinnett-Herczeg
Acting Chief, Regulatory Division